

# PAUL HASTINGS

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June 12, 2012

## VIA FACSIMILE

Chambers of Hon. Cathy Seibel  
United States District Judge  
The Hon. Charles L. Brieant Jr.  
Federal Building and Courthouse  
300 Quarropas Street  
White Plains, New York 10601-4150

Re: *Schlenger v. IBM Corporation and Gary Lipson*  
No. 09-CV-3986 (CS)

Your Honor:

We represent the defendants, and write regarding Your Honor's May 31, 2012 Order (the "Order") directing Plaintiff Susan Schlenger to return IBM's laptop, which Plaintiff kept following the end of her employment with IBM. (See Order, Dkt. #100 ("Plaintiff shall turn the laptop, which is concededly IBM's property, to IBM."))

Plaintiff's counsel has ignored the Order, and refuses to return IBM's property.

On May 31, following posting of Your Honor's Order to the docket, I emailed Plaintiff's counsel, Lisa Lipman and Gail Auster, asking when I could expect delivery of the laptop. Plaintiff's counsel refused to answer my question. On June 5, I again wrote to Plaintiff's counsel asking them to let me know before close of business that day when I could expect delivery of the laptop. Plaintiff has yet to return the laptop.

Instead of complying with the Order, Ms. Lipman and Ms. Auster are refusing to return the laptop until we meet certain self-imposed conditions with respect to its return—conditions that are not in Your Honor's Order. Among other things, Plaintiff is demanding that we hire a "qualified forensic provider" to "make and provide [Plaintiff] with a forensically acceptable copy of the [laptop's] hard drive." (See attached June 5, 2012 letter from L. Lipman.)

Adding further insult to her flouting of Your Honor's Order, Ms. Lipman suggests that such measures are appropriate "to ensure there is no spoliation before we turn over the laptop." (*Id.*)

Plaintiff's refusal to turn over the laptop notwithstanding Your Honor's Order—and Ms. Lipman's repeated suggestion that IBM is not entitled to the return of its own property because of some wholly baseless fear of "spoliation"—is outrageous and inappropriate. Ms. Lipman raised those same baseless arguments when IBM first moved for the return of its laptop, and Your Honor noted in the Order that IBM's obligations with respect to the preservation of relevant evidence were "needless to say." (See Order.)

Counsel for Plaintiff and  
Plaintiff shall ensure the laptop is  
turned over by 5pm on ~~Thursday~~ 6/14/12  
on pain of contempt. I have no  
reason to expect spoliation and  
did not condition my earlier

Order on any particular steps to be taken by IBM.  
Naturally IBM needs to preserve the contents of the

So Ordered.

*Cathy Seibel*  
Cathy Seibel, U.S.D.J.

Dated: 6/13/12

laptop and  
produce  
any  
discoverable  
material  
within it,  
but there is  
no reason  
to delay  
turnover of  
the  
computer  
itself.

If the parties  
cannot  
resolve their

discovery  
differences  
by the  
meet-and-  
confer process,  
please notify

the Court.  
Document discovery  
extended to  
7/20/12

**PAUL  
HASTINGS**

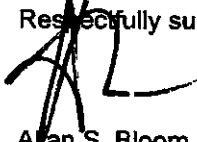
Chambers of Hon. Cathy Seibel

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We request that Your Honor again order Plaintiff to turn over the IBM laptop, immediately, and hold Plaintiff and her counsel in contempt if they fail to do so. We further request that Your Honor direct Plaintiff to reimburse IBM for the costs of preparing this letter—costs that could readily have been avoided had Plaintiff and her counsel simply complied with Your Honor's perfectly clear Order.

Respectfully submitted,



Alan S. Bloom  
of PAUL HASTINGS LLP

Attachment

cc: Gail I. Auster, Esq.  
Lisa Ruth Lipman, Esq.  
*Attorneys for Plaintiff*

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# ATTACHMENT

06/05/2012 13:52 9146366021

LISA R LIPMAN ESQ

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**FACSIMILE COVER SHEET**

DATE: 6/5/12

TO: Allan S. Bloom, Esq.  
Erin E. LaRuffa, Esq.

COMPANY/FIRM NAME: Paul Hastings LLP

TELEFAX NUMBER: (212) 319-4090

RE: Schlenger v. IBM Corp. et ano.  
09-CV03986 (CS)

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 3

INSTRUCTIONS:

Letter to Allan S. Bloom, Esq. of today's date.

**CONFIDENTIALITY NOTE**

The pages accompanying this facsimile transmission contain information from the law firm of Lisa R. Lipman, Esq. which is confidential and/or privileged. The information is intended to be for the use of the individual or entity named on this cover sheet. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this facsimile in error, please notify me by telephone immediately so that I can arrange for the retrieval of the original documents at no cost to you.

**IF THERE IS ANY PROBLEM WITH THIS TRANSMISSION, PLEASE CALL ME IMMEDIATELY AT (914) 235-8922.**

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LISA R LIPMAN ESQ

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MEMBER N.Y. AND CONN. BARS

June 5, 2012

*Via telefax (212) 319-4090  
email, and first class mail*

Allan S. Bloom, Esq.  
Paul Hastings LLP  
75 East 55th Street  
New York, New York 10022

Re: *Schlenger v. IBM Corporation, et ano*  
No. 09-CV-3986 (CS)

Dear Mr. Bloom:

In response to your request for the laptop in issue, please note: Plaintiff is ready to comply with Judge Seibel's Order, dated May 30, 2012 ("Order"), as soon as we have confirmation that defendants are in a position to comply.

The only way to comply with Judge Seibel's Order is for defendants to make and provide a forensically acceptable copy of the hard drive. This must be done by a qualified forensic provider. Please confirm that IBM is making arrangements to do so.

These arrangements will also include a certification of the chain of custody. Our understanding is that the laptop was locked upon plaintiff's termination and has remained locked continuously through the present.

In addition, this letter constitutes plaintiff's formal request to have her forensic provider inspect the laptop as soon as the forensically acceptable copy of the hard drive has been created. In order to facilitate same, our forensic provider will need all access codes and passwords to the laptop. I am waiting to hear from my forensic provider whether there is any other information he needs in order to complete his inspection efficiently, and will advise you of same.

If defendants intend to do anything other than have a forensically qualified provider make and provide to us the forensic image of the computer, please advise me at once, so that we can seek immediate intervention by the court to ensure there is no spoliation before we turn over the laptop.

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LISA R LIPMAN ESQ

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Allan S. Bloom, Esq.  
June 5, 2012  
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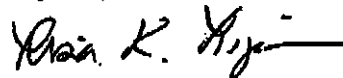
Defendants have not produced any email communications between plaintiff and anyone else at defendant (see, e.g., and not exhaustively, Defendants' Responses to Plaintiff's Document Request Nos. 10, 12, 14, 16, 18, 19, 23, 43, etc.), despite indicating that it will do so. This does not reassure us that defendants are, in fact, in any position to comply with the Order, and, to the contrary, raises concerns that relevant documents already may have been destroyed.

Defendant was on notice prior to its termination of plaintiff of the possibility of litigation. Moreover, defendants were included in the litigation as of November 2009. In the meantime, we also remind you of your client's preservation obligation to not interfere with the content on the Laptop, either remotely or otherwise as indicated in the Order.

Please be advised that, by tomorrow at the latest, I will know my client's availability for handing over the laptop, provided the above-stated arrangements are in place. I will be out of the office and out of town and not retrieving voice mail or email from this Thursday, June 7 through Sunday evening, June 10, returning to my office on Monday, June 11. In the interim, the best way to reach me will be by leaving a voice mail on my cell phone (914) 715-4348, and I will return the call as soon as I am able.

Thank you in advance for your anticipated cooperation.

Very truly yours,



Lisa R. Lipman

cc: Gail I. Auster, Esq.  
Erin E. LaRuffa, Esq.